IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3185 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAFATLAL APPAREL MFG.CO.LTD.

Versus

JASHODBEN M PATEL

Appearance:

Mr.Deepak G. Shukla for Messrs NANAVATI & NANAVATI for Petitioner.

Ms.SANGEETA N PAHWA for Respondent.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 18/08/2000

ORAL JUDGEMENT :

The petition is filed by the company challenging the order passed by the Industrial Tribunal as its Part 'I' decision on an application for interim relief dated 28.2.1991. The said decision is published in the

Official Gazette dated 9.4.1991, a copy of which is produced at Annexure 'A' to this petition.

2. Short facts giving rise to the present petition are that during pendency of a reference bearing (IT) No.310 of 1986 before the Industrial Tribunal at Ahmedabad, the respondent herein filed a complaint being No.1 of 1991 under sec.33A of the Industrial disputes Act, 1947 ("the Act" for brevity), praying that the petitioner company has to pay full wages to the respondent for all the days with effect from 23rd June 1990 till the date of filing of the complaint, i.e. upto 2.1.1991. The case of the petitioner company is that the respondent was appointed as a trainee by a letter dated 13.4.1986 with effect from 12.4.1986, a copy of the said letter is produced at Annexure 'B' to the petition. It is submitted that the contents of the letter are explicitly clear that the respondent is appointed only as a 'trainee'.

3. It is the case of the petitioner that the petitioner company imparts training in two phases. First phase consists of six months duration and during that first phase, a stipend of Rs.6.00 per day is payable and on successful completion of the first phase and on the basis of the recommendations of the person in- charge of the training, the trainee is placed in the second phase of training which is also of six months duration. During the second phase, stipend at the rate of Rs.8.00 per day is payable. It is provided in the letter dated 13.4.1986 that on completion of the training of both the phases, if the trainee is found suitable qua the work of the company, the company may appoint the trainee as an employee. If the company appoints a trainee as an employee, in that case, the appointment will on probation for six months and during the period of probation, the services will be liable to be terminated at 24 hours notice in writing. It is further given out that by a letter dated 5.10.1986, written by the Factor Manager to the respondent, which is produced at Annexure 'C', it is stated that the respondent is working as a trainee from 12.4.1986 and that her first phase is getting completed on 12.10.1986, which is successfully completed by the respondent and that the second phase of her training will start from 13.10.1986. Good wishes are also conveyed for successful completion of the second phase.

4. The respondent was served with a letter dated 27.10.1987, wherein it is stated in no uncertain terms that the respondent is taken as a badli worker from 12.4.1987 and she was on probation for six months. It is

also stated that the said period was completed successfully. However, the presence is not satisfactory and therefore, the respondent is advised to be regular. The contention which is raised on behalf of the petitioner company is that during the pendency of the reference, an application in the nature in which the present one was filed by the respondent could not have been entertained by the Tribunal. Attention of the Court was drawn to the provisions of sec.33 of the Act, wherein it is provided that conditions of service, etc. shall remain unchanged under the circumstances provided therein, during the pendency of the proceedings. subsec.1 of sec.33 reads as under :

"33. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings --

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall, --

(a) in regard to any matter connected with the dispute, alter to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

.. ..

.. .."

5. It is submitted that in view of the provisions of sec.7 of the Act, wherein the subject matters to be dealt with by the Labour Courts are provided wherein subsec.1 reads as under.

"The appropriate Govt. may by notification in the official gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

It is pointed out that under Schedule II the matters within the jurisdiction of the Labour Court are prescribed and that the matters of application and

interpretation of standing orders is also within the jurisdiction of the Labour Courts under sec.7.

6. It is submitted that the respondent was appointed only as a trainee by an order dated 13.4.1986 and on her completion of two phases of the training, she was appointed as badli worker by an order dated 27.10.1987 on probation for a period of six months. Therefore, there is no question of the respondent being made a permanent workman by the petitioner company. It is submitted that in view of that the Tribunal while giving Part 'I' decision on the Complaint (IT) No.1/81 has exceeded its jurisdiction and could not have passed an order to the effect that the complainant be considered as a permanent employee and that since 23rd June 1990 onwards until she is not assigned work on account of insufficient work, she should be paid lay off compensation according to sec.25(C) of the Act. It is also stated in the said order that the other points which are raised in the said complaint will be decided hereafter.

7. It is submitted that the Tribunal could not have passed an order to the effect that the complainant should be treated a permanent employee in view of the documentary evidence which was produced before the Tribunal, which is also available for perusal of this Court. This Court while passing an order on 26th June 1991 has observed as under :

"Rule. Interim stay in terms of paragraphs 13(B).

It may be stated that Mr.N.R. Sahani appearing for the respondent opposed granting of interim relief and in support of his submission, he has relied upon the decision of this Court in Gujarat State Machine Tools Corpon Ltd Vs. Deepak J Desai, 1987 (1) GLR page 387. That was the case of temporary workmen employed in a permanent vacancy. Therefore, that decision can be of no helpful to the respondent. Another decision which has been relied upon by the learned advocate Mr.Sahani is, in the case of Jardine Hendersen Ltd. Vs. Their Employees, AIR 1967 SC 515. In that case the Supreme Court was required to consider the definition of a permanent workman more particularly the words 'engaged on a permanent nature of work through out the year'. Interpreting the same the Supreme Court held that the words engaged on a permanent nature of work through out the year, were intended to mean

'engaged on a permanent nature of work last through out the year' and not engaged through out the year on a permanent nature of work. Here we are concerned with the case of Badli worker. Though the petitioner has completed training period, she has been continued only as a Badli worker. The appointment letter clearly discloses that she was appointed as a Badli operator. We are therefore, prima facie of the view that the award given by the Industrial Tribunal is not proper. This is the reason why we have thought it fit to grant interim relief."

8. Ms.Sangeeta Pahwa appearing for the respondent submitted that the respondent could not have been considered as a Badli worker as she was not appointed against any particular workman and therefore, there was no question of the respondent being treated as a Badli worker. Alternatively she submitted that as she has already completed more than one year, she is to be treated as a permanent workman. It is the case of the respondent that she was appointed on 12.4.1987 and therefore, she has completed a period of more than one year and therefore, she should not be treated as a Badli worker. It is also submitted that in fact, the letter at Annexure 'B' by which she was appointed as a trainee mentions that on completion of training of both the phases, the respondent will be appointed as an employee of the company and therefore, there is no question of the respondent being a Badli worker. This Court is not in a position to agree with the manner in which clause (2) of the order dated 13.4.1986 is sought to be construed inasmuch as the plain and simple language of the said clause (2A) is that on completion of the training of both the phases, if the respondent is found suitable for the work of the company, she will be appointed as an employee in the Company. In that case she will be on probation for six months and during that period her services will be liable to be terminated at 24 hours notice.

9. It is also submitted by learned advocate for respondent that it is a matter of common knowledge that when a person is appointed on probation it is always against a permanent vacancy. It was then submitted that though it is mentioned in Annexure 'D' that she is appointed as a 'Badli operator", the same is of no consequence because once she is appointed on probation for a period of six months she cannot be treated as a Badli operator. It is also submitted that so far as the jurisdiction part is concerned, the Tribunal had the jurisdiction and the submissions made on behalf of the

petitioner company that the Tribunal had no jurisdiction are without any substance inasmuch as there is no question of deciding either the application or interpretation of any standing orders and therefore, there was no question of the matter being within the jurisdiction of the Labour Court only and not within the jurisdiction of the Tribunal.

10. It is submitted on behalf of the petitioner company that in other proceedings between the petitioner company and the Gujarat Mazdoor Panchayat being Special Civil Application No.3669 of 1990, a list of permanent workmen and Badli workmen was given by the Gujarat Mazdoor Panchayat to this Court and it was stated by the petitioner company before this Court that the petitioner company will take Badli workmen as and when the work will be available with the petitioner company. It is submitted that in that list also, name of the present respondent appeared as a Badli worker.

11. It was submitted on behalf of the respondent that merely because the name of the present respondent has appeared in the list of Badli workmen given by Gujarat Mazdoor Panchayat, the same cannot decide the status of the present respondent and that the the order passed by the Tribunal is just and proper. It is also submitted that in Annexures 'B' as well 'C' there is no mention about the respondent being a Badli workman while it is for the first time that in Annexure 'D' that the petitioner company has termed the respondent as a Badli operator.

12. Considering the rival contentions of both the sides, it is clear that the respondent was appointed by the petitioner company only as a trainee and as a trainee the respondent was informed that on completion of training of both the phases, if she is considered suitable for the work of the company, she may be taken as an employee of the company. By no stretch of imagination, this document confers a status of permanent workman on the respondent. When in continuation of the same another letter dated 5.10.1986 is issued informing the respondent that she has completed the first phase successfully and that her second phase commences from 13.10.1986, the same also cannot confer any right on the respondent. Both these documents, therefore, are of no help to the respondent so as to determine her status about permanent workman. The only point remains for consideration is Annexure 'D' dated 27.10.1997 wherein it is clearly stated that she is appointed as a Badli operator on probation for a period of six months. There

is no ambiguity in the contents of that letter. Therefore, there is no question of the respondent getting any other status than that of Badli operator.

13. It is clear from the facts that reference bearing (IT) No.310 of 1986 is still pending before the appropriate forum and during pendency of that, the present complaint is filed only in the year 1991 being complaint (IT) No.1/91. For the first time the respondent raised this dispute before the Tribunal, which has passed the order to the effect that the complainant be treated as a permanent workman. This order is without any proper adjudication about the status of the respondent and therefore, the same cannot be sustained.

14. It is contended on behalf of the respondent that in view of the provisions of sec.25(C) of the Industrial Disputes Act, the respondent cannot be termed as a Badli workman. Explanation attached to sec.25(C) is relied upon by the learned counsel for the respondent, which reads as under :

Sec.25(C) .. ..

Explanation -- "Badli workman" means a workman who is employed in an industrial establishment in the place of another workman whose name is borne on the muster rolls of the establishment, but shall cease to be regarded as such for the purpose of this section, if he has completed one year of continuous service in the establishment."

So far as this explanation part is concerned this submission of the respondent can be taken into consideration when in a substantial proceedings a question is raised about determining the status of the workman. Therefore, in this application this submission has no relevance. Hence rejected.

15. It is also contended that the Tribunal while considering the complaint filed by the present respondent has held that in view of no standing order of the petitioner company, the standing orders framed under the Industrial Employment and standing order of 1946 will be applicable to the respondent and as per the said standing orders, the workmen are classified into six classes and in view of that standing orders, the respondent can be terms as a workman, i.e. a permanent workman and there is no question of the respondent being considered as a

badli workman. This contention also can be raised by the respondent in substantial proceedings and the Tribunal was not right in considering and adjudicating upon the same in the present proceedings and declaring the respondent to be a permanent workman.

16. Even at the time of admission of this matter, reasons were recorded for which stay of the said order was granted. That shows that the order which was passed by the Tribunal was found to be without jurisdiction even at admission stage while considering the mater prima facie. Now after hearing the contentions of both the sides at length, no doubt is left that the order passed by the Tribunal is without jurisdiction and therefore, the petition succeeds. The decision of the Industrial Tribunal in complaint (IT) No.1/91, Part 'I' dated 28.2.1991 is hereby quashed and set aside. Rule is made absolute. No order as to costs.

18th August 2000 (Ravi R. Tripathi, J.)

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